

# **ENVIRONMENTAL ASSESSMENT DECISION NOTICE**

## **Poindexter Slough Habitat Restoration**

Montana Fish, Wildlife & Parks  
Region 3, Bozeman  
April 8, 2014

### **Proposed Action**

The Beaverhead Watershed Committee and Montana Fish, Wildlife & Parks (FWP) have proposed this project to restore and maintain high quality trout habitat in Poindexter Slough. Habitats in Poindexter Slough were degraded by sediment originating from the Beaverhead River that could not be effectively transported through the system because of its large channel dimensions and relatively low flows. Progressive sedimentation resulted in decreased abundances of adult trout, angler use, and angler satisfaction. The Beaverhead Watershed Committee and FWP proposed to replace existing irrigation infrastructure, modify channel dimensions, and transplant riparian vegetation to improve fisheries habitat and restore natural processes of habitat formation and maintenance to Poindexter Slough. Sediment will be maintained in perpetuity using periodic habitat maintenance flows that would have a 3-day peak of 150 to 200 cfs, last for a total of 7 to 10 days, and occur once every two to five years if conditions allow. It is FWP's expectation that this project will result in a return to fish abundances and levels of angler use and satisfaction comparable to pre-sedimentation levels.

### **Montana Environmental Policy Act**

FWP is required by the Montana Environmental Policy Act (MEPA) to assess significant potential impacts of a proposed action to the human and physical environment. In compliance with MEPA, a draft Environmental Assessment (EA) was prepared by FWP for the proposed project and released on January 17, 2014 for a 30-day public comment period. The draft EA was titled: Poindexter Slough Habitat Restoration. The draft EA was circulated to a standard FWP Region 3 contact list and was also posted and remains available for viewing on the FWP webpage: <http://fwp.mt.gov/news/publicNotices>. Legal notice indicating release of the EA was sent to the *Dillon Tribune* and *Montana Standard*.

### **Summary of Public Comment and FWP response**

Eight written public comments were received during the 30-day EA review period ending February 17, 2014. Twenty-six individuals attended the informational public meeting in Dillon. Oral comments were not taken at this meeting.

All of the written comments received were classified as *supportive* of the proposal, although some requested clarification. One commenter identified minor inconsistencies between description of accreted flow rates within the EA and wording that they felt misconstrued specific water rights and use, both of which have been corrected. The modifications do not change the scope or analysis completed in the draft EA.

The remaining comments are generally summarized below:

1.) Development and execution of a monitoring plan.

The monitoring recommendations for channel response to a habitat maintenance flow outlined in Appendix 2 item 4 of the EA will be followed. It is anticipated that this sampling will occur annually; however, in years when a habitat maintenance flow occurs monitoring before and after the flow are expected. FWP has conducted trout population sampling in a standard reach of Poindexter Slough for the past 30 years and will continue to monitor annually at this location to assess the response in the fish assemblage to the proposed action. Angler use will be monitored by the standard FWP bi-annual statewide angler use phone survey.

2.) Baseflow levels in Poindexter Slough

Baseflow discharges for Poindexter Slough are described on page 6 of Appendix 2. The ideal baseflow discharge is about 50 cfs, which is the present operating condition. Baseflows would be reduced below this level only if flows in the Beaverhead River were not sufficient to deliver this discharge or delivery of this discharge would be detrimental to the Beaverhead River. It is not anticipated that flows would be reduced to below 20 cfs at any location within Poindexter Slough. FWP will be responsible for setting non-irrigation season flows in Poindexter Slough at the Beaverhead River headgate in accordance with those described in Appendix 2.

3.) Need for, type, and any negative effects of materials used in hardened crossings

The fabric material (Propex 4553 geotextile fabric) that underlays the proposed hardened crossings is necessary to prevent mobilization of fine sediment when these structures are being used and is a standard specification and requirement of hardened crossings (NRCS Code 578). This material is non-biodegradable and is inert and chemically stable. It is anticipated that this material will remain in place permanently and be maintained as necessary associated with any maintenance of the hardened crossing.

4.) Legality of executing habitat maintenance flows

Poindexter Slough is a channel of the Beaverhead River. The General Land Office survey plat dating to 1870 shows clearly the water body known today as Poindexter Slough as a channel of the Beaverhead River, although other waters also arise in Poindexter Slough for which water users have water rights that are not directly diverted from the Beaverhead River. Overtime, the upstream portions of Poindexter Slough have been manipulated in order to regulate flows into Poindexter which supplies several irrigation diversions with the largest being the Dillon Canal. Most recently, the connection to the main channel of the Beaverhead River was moved upstream in the early 1980s to its present location. While the once natural connection has undergone significant manipulation, Poindexter Slough is still a natural channel of the Beaverhead River. The 2008 Montana Supreme Court decision regarding Mitchell Slough lays out the premise that anthropogenic manipulation fails to change the natural character of a stream. As such, Poindexter Slough remains a natural channel of the Beaverhead River even though its connection to the Beaverhead River has been anthropogenically modified.

Flows between channels of rivers are manipulated across Montana for varying reasons. For example, the Supreme Court noted in the Mitchell Slough Decision that water was manipulated between the East Fork and West Fork channels of the Bitterroot River just upstream of the Mitchell Slough diversion. This manipulation of flow between channels is unto itself not an appropriation of water requiring a water right. Such is the case of providing more flow into Poindexter which is a channel of the Beaverhead River. It should also be noted the Clark Canyon Water Supply Company shares owned by Dillon Canal are delivered at their diversion on Poindexter and not at the headgate on the Beaverhead River main channel further supporting that Poindexter is a channel of the Beaverhead River.

FWP has instream water rights for the reach of the Beaverhead River where Poindexter Slough occurs. These water rights include a Statements of Claim and a Water Reservation both for 200 cfs. These water rights apply to all channels of the Beaverhead River which would include Poindexter Slough. Also, FWP specifically recognized the high fishery value in Poindexter Slough, applying for and receiving a reservation for a 57.9 cfs base flow to specifically protect waters entering Poindexter whether from the main channel of the Beaverhead River or from other points along Poindexter. The upstream reach of the instream reservation is listed as beginning in the SW ¼ Section 3, TWP 8S, RGE 9W, the location to which the connection to the main channel of the Beaverhead River was moved in the early 1980s. The reservation for Poindexter clearly recognizes that water would be diverted from the main channel of the Beaverhead at the present location. While a water right is not necessary to divert water into the Poindexter Slough channel from the Beaverhead main channel, the existing instream flow water rights of FWP further support such action.

Even though flows entering Poindexter from the main channel of the Beaverhead are now controlled, Poindexter is still a natural water body and channel of the Beaverhead River despite anthropogenic influences. Diversion of water from the Beaverhead main channel does not require a water right even though FWP's existing instream water rights do further support this activity. Increasing the capacity to divert water into the Poindexter Slough channel is not an expansion of a water right but is simply an effort to restore to some degree the natural function of Poindexter Slough as a channel of the Beaverhead River. Habitat maintenance flows as described in Appendix 2 of the draft EA will not cause property damage due to excessive flooding, excessive bank erosion, or other mechanisms and the ability of others to exercise their water rights from the reach of the Beaverhead bypassed by the Poindexter Slough channel will be preserved as well.

##### 5.) Project's effects on other's water rights, water delivery, or operation during construction.

An Operation Agreement that describes the roles and responsibilities of the Beaverhead Watershed Committee, FWP, the Dillon Canal Company, and other water rights holders along Poindexter Slough has been developed. The language contained therein specifies that this project will not affect any water rights, water delivery, or operation of any irrigation systems during construction or over the life of the project.

6.) Coordination, availability, and timing of habitat maintenance flows.

The aforementioned Operation Agreement specifies how habitat maintenance flows, as described in Appendix 2, will be coordinated among stakeholders. All signatory parties will meet annually no later than March 15 to determine whether a habitat maintenance flow can occur that year based on 1) hydrologic conditions in the Beaverhead River as described in Appendix 2 and 2) irrigation timing and demand of the Dillon Canal. An additional meeting may be scheduled immediately following irrigation season depending on year-specific conditions. In years when a habitat maintenance flow occurs, mutually agreed upon specific start and end dates that are consistent with durations described in Appendix 2 will be established and strictly adhered to. FWP will be responsible for coordination, management, and execution of habitat maintenance flows including associated operation of the Beaverhead River headgate as described in Appendix 2. As Appendix 2 describes, adequate releases from Clark Canyon Dam to execute habitat maintenance flows commonly occur as part of normal reservoir operations.

7.) Improved signage

An effort will be made to add signs in a manner that makes the FAS property boundaries more clear.

8.) Quality, findings, and timing of cultural resources inventory and SHPO consultation.

Prior to initiation of any ground disturbing activities related to construction of this project, a class III pedestrian cultural resources survey will be completed by a qualified archeologist and their findings submitted to a historic preservation officer in accordance with state statute §22-3-433. No ground disturbing activities will occur until consultation is complete and a concurrence letter is received from the State Historical Preservation Office signifying all requirements of state statute §22-3-433 are satisfied.

**Final Environmental Assessment for the EA titled:** Poindexter Slough Habitat Restoration

Aside from the aforementioned minor corrections, there are no further modifications necessary to the Draft Environmental Assessment based on public comment. The updated Environmental Assessment, together with this Decision Notice, will serve as the final document for this proposal.

**Decision**

Based on the Environmental Assessment, public comment, and the need to improve trout habitat in Poindexter Slough, FWP's decision is to proceed with the proposed Poindexter Slough Habitat Restoration Project.

I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required.

A handwritten signature in black ink, appearing to read 'P. J. Flowers', with a large, sweeping loop at the end.

Patrick J. Flowers  
Region Three Supervisor